



LEGACY LAW

Protecting the assets in your family tree

Thou shalt not covet ... thy neighbour's house (10th Commandment)

The writer has a personal interest in this case because, 20 years ago, his first abode in Australia was in Louisa Road, Birchgrove in Sydney's Inner West. We lived in the worst block on this, arguably the best street in the area. The road is or was home to *other* celebrities including Bryan Brown, Bruce Beresford, Georgie Parker and Rebel Wilson. They may be surprised at the drama that was developing around them. Or then again, they may not have been surprised in the slightest!

No matter where you live in Australia, a fight in the neighbourhood attracts the interest of all the locals.



Following our recent articles on carers allegedly behaving badly, we are pleased to share a story of neighbours who acted honourably, looked after an elderly lady and were found, after a stressful legal battle, to have done nothing wrong.

The case is [Moore v Aubusson \[2020\] NSWSC 1466](#).

Mr Moore and his partner Ms Andreasen (the plaintiffs) lived in 70 Louisa Road and the deceased, Ms Barbara Murphy, owned 66 and 68 Louisa Road. The defendant was the sole surviving executor, Mr Aubusson. The plaintiffs sought a declaration that the executor held, not just the \$25k that was allotted in the Will but the whole of the deceased's estate on trust for them and an order that the estate be transferred to them.

The plaintiffs based this claim on the fact that the deceased had promised to leave them her whole estate in return for them looking after her for the rest of her life, and for them agreeing not to undertake their desired renovations to the extent that those works would impede the

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view of Sydney Harbour from the deceased's property. Family members and friends of the deceased and the plaintiffs gave evidence that they were told of this arrangement.

Affidavits about these representations were sworn 12 years later and the defendant tried to make much of the delay.

The plaintiffs held up their part of the arrangement and looked after the deceased until her death in 2015. After her death, they were advised that the deceased had left her estate in equal shares to her siblings and left only \$25,000 to Mr Moore.

Everyone's evidence was properly heard and considered but the Court quite publicly preferred the evidence of some witnesses and found others to be partly "implausible" and to have colluded in their evidence.

The Court found that the deceased's promise only concerned the deceased's two properties and not the whole of the estate. The Court further found that a detrimental reliance on the deceased's promise had been established as the plaintiffs cared for the deceased at the expense of their own family commitments and by making personal sacrifices. On this basis, the Court ordered that the properties be transferred to the plaintiffs.

As always, the lawyers got paid and Chief Judge Ward pointed out, there were "two applications by the executor(s) for judicial advice, the first heard by Lindsay J in 2016 and the second by Rees J at the beginning of 2019. I simply note that this may be relevant if there is, as was foreshadowed, ultimately a dispute as to the executor's right to be indemnified from the estate for the costs of these proceedings."

In our experience, the executor's costs would usually be paid out of the estate in situations like this.

The moral of the story is to by all means do what you want with your estate but be mindful there can be issues and challenges and all roads lead to Court. Older people can be very vulnerable but they can also tell people what they want to hear!

If you take away all the drama, this is a typical story of an elderly person who wanted to live in their home and not be taken away to live in a nursing home with strangers. Some reports said the carers reportedly got assets worth \$40m for their trouble.

We assist with preparation of contemporaneous evidence to support people who have done the right thing and protect their reputations from being impugned in such a public arena.

I still live in the Inner West but in a less glamorous street. I wonder what might have happened if I had stayed there and befriended Mrs Murphy...

This is a local interest case but it can happen anywhere. Please call us if you think it could happen to you or your loved ones.